

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE DILLE FAMILY TRUST,
Plaintiff,

v.

THE NOWLAN FAMILY TRUST,
Defendant.

CIVIL ACTION

NO. 15-6231

ORDER

AND NOW, this 25th day of August, 2017, upon consideration of: (1) Defendant's Motion to Exclude the Expert Report and Testimony of Jeff Rovin (ECF 102), Plaintiff's Response in opposition thereto (ECF 114), and Defendant's Reply in support thereof (ECF 128); (2) Defendant's Motion to Exclude the Expert Report and Testimony of Michael S. Ramage (ECF 103), Plaintiff's Response in opposition thereto (ECF 113), and Defendant's Reply in support thereof (ECF 127); (3) Defendant's Motion to Exclude the Expert Report and Testimony of Richard Spreng (ECF 104), Plaintiff's Response in opposition thereto (ECF 111), and Defendant's Reply in support thereof (ECF 129); (4) Defendant's Motion to Exclude the Expert Report and Testimony of Michael Lazzara (ECF 105), Plaintiff's Response in opposition thereto (ECF 112), and Defendant's Reply in support thereof (ECF 126); (6) Defendant's Motion for Summary Judgment (ECF 106 & 107), Plaintiff's Response in opposition thereto (ECF 115), Defendant's Reply in support thereof (132), and Plaintiff's sur-reply thereto (ECF 141); (7) Plaintiff's Motion for Partial Summary Judgment (ECF 96), and Defendant's Response in opposition thereto (ECF 130); and, (8) Defendant's Motion to Strike Plaintiff's sur-reply (ECF 146), and Plaintiff's Response in opposition thereto (ECF 151); **IT IS ORDERED** as follows:

(1) Defendant's Motion to Exclude the Expert Report and Testimony of Jeff Rovin (ECF 102) is **GRANTED**;

(2) Defendant's Motion to Exclude the Expert Report and Testimony of Michael Lazzara (ECF 105) is **GRANTED**;

(3) Defendant's Motion for Summary Judgment (ECF 106 & 107) is **GRANTED in part and DENIED in part** as follows;

- a. Defendant's motion for summary judgment on Plaintiff's opposition to Defendant's trademark application (Count One) is **GRANTED** insofar as Plaintiff's opposition proceeds under Section 43(c) of the Lanham Act, and **DENIED** insofar as the opposition proceeds under Section 2(d) of the Lanham Act.
 - i. **JUDGMENT IS ENTERED IN FAVOR** of the Nowlan Family Trust and **AGAINST** the Dille Family Trust on Count One insofar as Plaintiff's opposition proceeds under Section 43(c) of the Lanham Act.
- b. Defendant's motion for summary judgment on Plaintiff's federal trademark dilution claim (Count Three) is **GRANTED**.
 - i. **JUDGMENT IS ENTERED IN FAVOR** of the Nowlan Family Trust and **AGAINST** the Dille Family Trust on Count Three.
- c. Defendant's motion for summary judgment on Plaintiff's contract claim (Count Two) is **GRANTED**.
 - i. **JUDGMENT IS ENTERED IN FAVOR** of the Nowlan Family Trust and **AGAINST** the Dille Family Trust on Count Two.

(4) Plaintiff's Motion for Summary Judgment (ECF 96) is **GRANTED IN PART AND DENIED IN PART** as follows;

- a. Plaintiff's motion for summary judgment on Plaintiff's opposition to Defendant's trademark application (Count One) is **DENIED**.
- b. Plaintiff's motion for summary judgment as to Defendant's affirmative defense to Count One of claim preclusion is **GRANTED**.
- c. Plaintiff's motion for summary judgment as to Defendant's affirmative defense to Count One of issue preclusion is **GRANTED**.

(5) Defendant's Motion to Exclude the Expert Report and Testimony of Michael S. Ramage (ECF 103) is **DISMISSED AS MOOT**;

(6) Defendant's Motion to Exclude the Expert Report and Testimony of Richard Spreng (ECF 104) is **DISMISSED AS MOOT**; and

(7) Defendant's Motion to Strike Plaintiff's sur-reply (ECF 146) is **DENIED**.

BY THE COURT:

/s/Wendy Beetlestone, J.

WENDY BEETLESTONE, J.